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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,491	07/21/2003	Brian Roberts	10750-250	4988

1059 7590 12/31/2007  
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EXAMINER
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LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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12/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/622,491

Applicant(s)

ROBERTS, BRIAN

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3, 17-19, 22-24, 26-32, 34, 35 and 37-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 17-19, 22-24, 26-32, 34, 35 and 37-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/28/07 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 27, 28, 34, and 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 27 and 34 recite that the side cinch strap is positioned at a midpoint on the backpack. Nowhere in the originally filed disclosure is the side cinch strap disclosed as being positioned at a midpoint on the backpack. Examiner is of the position that the term "midpoint" is very specific, as a point is a very specific location. The term "middle region" is broader than "midpoint", and

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Examiner feels that Applicant may have support for a term such as "middle region", as seen in Figure 6.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17-19, 22-24, 26-28, 30-32, 34-35, 37-39, 41, 42, 44, 45, 47, 48, 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. (US 6,474,524 B1) in view of Gausling et al. (US 6,164,509 A), and further in view of Godshaw (US 6,601,743 B2).

Regarding claims 17, 26, 30, 52, and 54, Ivarson et al. disclose a backpack comprising a backpack body, said backpack body having a back-facing face (16), and an away facing face generally opposed to said back-facing face, said backpack body defining at least one storage compartment having a bottom (14), a closure member (32) and a top that is openable by the closure member, wherein said bottom is angled upwards in a direction away from said back-facing face, where said backpack is configured to maintain said bottom generally in said direction when said backpack contains a load therein; and at least one shoulder strap (38) connected to said backpack body and extending between a first end point proximate the top of the backpack body and a second end point proximate the bottom of the backpack body, wherein the second end point is adjacent the back-facing face, and wherein said at least

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one shoulder strap is adapted for mounting said backpack on a wearer; and wherein said backpack body has an away-facing face (24) generally opposed to said back-facing face. Iverson et al. fails to disclose a semi-rigid bottom board positioned at said bottom and at least one cinch strap connected between the backpack body and shoulder strap and extending across the closure member, the cinch strap including a separation clip that is separable whereby unobstructed access is provided to the storage compartment that is openable by the closure member when the separation clip is separated.

Regarding the semi-rigid bottom board, Gausling et al. teaches that a rigid bottom on a backpack body provides added support and ergonomic utility to the backpack (col. 7 lines 12-17). Gausling et al. further teaches that this rigidity along the bottom of the backpack body can be provided by inserting a rigid member such as a hard Nylon sheet inside a pocket formed by the bottom panel of the backpack (col. 7 lines 34-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide rigidity along the bottom surface of the Iverson et al. backpack by implementing a semi-rigid bottom board along the bottom surface, as taught by Gausling et al., in order to provide additional support and ergonomic utility to the backpack.

Regarding the cinch strap extending over the closure member, Gausling et al. teach a strap system where support straps (600) extend from a backpack's shoulder strap over the top of the backpack to an away-facing face of the backpack, the support straps functioning to maintain the shape of the bag and offer further support for the load being carried (col. 9 lines 5-27). It would have been obvious to one having ordinary skill

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in the art at the time the invention was made to provide support straps on top of the backpack of Ivarson et al., as taught by Gausling et al., in order to help maintain the shape of the bag and to provide more support for the load being carried in the backpack. These straps, when implemented on the backpack of Ivarson et al. would certainly extend across the closure (32) of Ivarson et al. There is no inventive step in taking a shoulder strap feature from one backpack and implementing that feature on the shoulder strap of another backpack absent a showing of unexpected results.

Regarding the cinch strap having a separation clip, the support straps that have been added to the Ivarson et al. backpack are not separable and inhibit a user's ability to access the interior of the backpack through the zippered closure (32). Godshaw, however, also discloses a pack and, like Gausling et al., teaches that support straps (50,52) extend over the top of the pack, the support straps serving to maintain the shape of the bag and to provide more support the load being carried in the pack (col. 3 lines 6-13) and the support straps further including separation clips (60) that allow a user to adjust or detach the support straps and access the top panel opening (22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include separation clips on the support straps of the modified Ivarson et al. backpack, as taught by Godshaw, so that a user could have easier access to the opening (32) of the backpack. The addition of these separation clips effectively transforms the support straps of the modified Ivarson et al. backpack into adjustable cinch straps.

Regarding claims 18, 23, and 31, Ivarson et al. discloses that the back panel (16) may be reinforced with a layer of material in order to enhance rigidity (col. 2 lines 56-59). Gausling et al., as previously mentioned, teaches that a panel of a backpack may be given rigidity by providing a semi-rigid board on the panel. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position a semi-rigid back board on the back-facing panel of the modified Ivarson et al. backpack in order to enhance the backpack's rigidity for support purposes.

Regarding claims 19 and 32, Ivarson et al. discloses that the back-facing panel may include a cushion material for increased comfort to the user (col. 2 lines 59-61).

Regarding claims 22 and 53, the cinch straps of the modified Ivarson et al. backpack have one end attached to the away-facing face of the backpack and the other end attached to the shoulder straps at a spaced distance from the back-facing face of the backpack, as taught by Gausling et al. The cinch straps are also adjustable, as allowed by the separation clips taught by Godshaw. The remaining limitations in the claim are satisfied by the modified Ivarson et al. backpack as applied to claim 17 above.

Regarding claim 24, the cinch straps of the modified Ivarson et al. backpack as applied to claim 22 above satisfy the claim's limitations.

Regarding claims 27, 28, 34, and 35, the modified Ivarson et al. backpack as applied above does not yet include a side cinch strap positioned at a midpoint of the backpack for cinching the away- and back-facing faces of the backpack towards one another. Gausling et al., however, also teaches that in addition to the top support straps (600), downwardly extending side cinch straps (400) may be provided for adjusting the

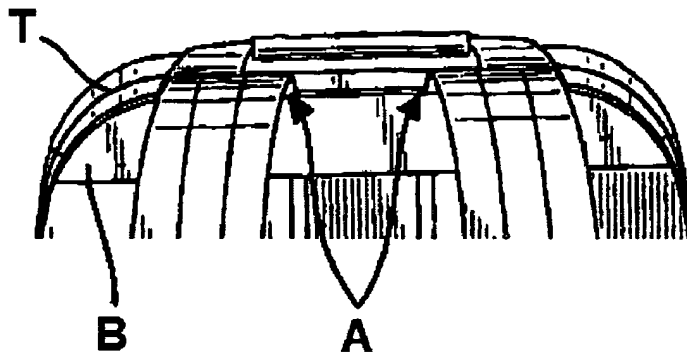
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load distribution of the backpack by cinching the away- and back-facing faces of the backpack towards one another (col. 6 line 65 – col. 7 line 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further include downwardly extending side cinch straps on the modified Ivarson et al. backpack, as taught by Gausling et al., in order to further adjust the load distribution of the backpack. Regarding the location of these side cinch straps, Examiner is of the position that the cinch straps of Gausling et al. are positioned at a midpoint of the backpack to degree that Applicant has disclosed. Examiner notes that when the side cinch straps of the modified Ivarson et al. backpack are implemented on the bottom of the original Ivarson et al. shoulder strap in the manner taught by Gausling et al., the bottom end of the shoulder strap is still connected to the backpack body adjacent to the back-facing face (via buckle 360).

Regarding claims 37, 41, and 51, the cinch strap of the modified Ivarson et al. backpack, as taught by Gausling et al., would have one end connected to the backpack body and one end attached to the shoulder strap wherein the two ends would be on opposite sides of the closure member (32) of Ivarson et al.

Regarding claims 38, 42, 44, 48, the back-facing face of the modified Ivarson et al. backpack has a top end (T, figure below) and the shoulder strap is connected to the back-facing face (B, figure below) at a position (A, below) spaced from the top end of the back-facing face.





Regarding claims 39 and 45, the cinch strap of the modified Ivarson et al. backpack has a first end positioned towards the away-facing face, as taught by Gausling et al.

Regarding claims 47 and 50, the claims combine limitations that have already been shown to be unpatentable over the modified Ivarson et al. backpack. The claims further recite the shoulder strap cinch strap having two portions, one connected to the shoulder strap, and one connected to the backpack body, where the two portions are connected to different parts of a quick-release mechanism. The buckled cinch strap of the modified Ivarson et al. backpack, as taught by Gausling et al. and Godshaw, includes two portions, one attached to the shoulder strap and one to the backpack body, as taught by Gausling et al., where the two portions are connected to different parts of a quick-release mechanism, as taught by Godshaw.

6. Claims 3 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph 5 above in view of Shook (US 5,911,348).

Regarding claim 29, the modified Ivarson et al. backpack includes the claimed features except for the back-facing face having at least one air channel defined thereon,

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wherein said air channel has at least one opening at the periphery of the said back-facing face.

While the modified Ivarson et al. backpack includes padding on the back-facing panel, Shook teaches that it is known in the art to use padding that provides a series of air channels on the back-facing panel between the backpack body and the user's back in order to provide ventilation and comfort along a user's back. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also use padding that provided at least one air-channel on the modified Ivarson et al. backpack, as taught by Shook, in order to provide ventilation along a user's back and help to prevent excessive perspiration and possibly discomfort.

Regarding claim 3, at least one, if not all, of the air channels taught by Shook can be considered to face the spine of a wearer, as they face the user's back in general and the spine is located on the back, and all are certainly sufficiently deep so as to avoid contact with the spine of said wearer when in use, effectively satisfying the limitations of the claim.

7. Claims 40, 43, 46, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph 5 above in view of Gleason et al. (US 5,975,387 A).

The modified Ivarson et al. backpack includes the claimed features except for the cinch strap having a length adjustment strap positioned in front of the wearer when the wearer is wearing the backpack. Instead, the cinch straps, as taught by Gausling et al., are fixedly attached to a portion (310) of the shoulder strap that is not in front of the

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wearer. Gleason et al., however, also disclose a backpack having load-distributing cinch straps (54) extending between the pack body and the shoulder straps and teach that the cinch straps can be adjustably attached to the shoulder straps via an adjustment buckle (56). A portion of the cinch strap lies in front of the user so that the users can access the cinch strap to adjust the position of the load on their back (Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the fixed cinch strap attachment of the modified Ivarson et al. backpack with an adjustable attachment, as taught by Gleason et al., so that a user could easily adjust the position of the load on their back by adjusting a portion of the cinch strap located on their front side within easy reach.

### ***Claim Objections***

8. Claim 47 is objected to because the claim should read, in part, "at least one shoulder strap cinch strap extending forwardly over..." Appropriate correction is required.

9. Claim 50 is objected to because the claim should read, in part, "wherein the shoulder strap cinch strap has first...." Appropriate correction is required.

### ***Response to Arguments***

10. Applicant's arguments filed 9/22/06 have been fully considered but they are not persuasive.

Applicant has asserted that the shoulder strap system of Gausling et al. does not provide for the second end point of the shoulder strap being adjacent the back-facing face. First, Examiner is of the position that "adjacent" means "near to" and that the

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second end point of the shoulder strap of Gausling et al. is certainly near to the back-facing face of the backpack. Second, Examiner notes that the second end of the shoulder strap can be taken to be the end of strap 320, before strap 400 begins. This second end of 320 is anchored to the back-facing face of the backpack via strap 500. Another interpretation can include the second end being anchored to the back-facing face via ring 360. Any of these interpretations clearly show that the second end of the shoulder strap of Gausling et al. is adjacent to the back-facing face of the backpack.

Applicant has asserted that if one of ordinary skill in the art were to implement the shoulder strap cinch straps (600) of Gausling et al. on the backpack of Ivarson et al., they would also implement the entire shoulder strap assembly of Gausling et al., not just the upper straps (600). Examiner notes that in the rejections set forth above, the upper straps (600) and the side straps (400) of Gausling et al., basically the entire shoulder strap system, have been implemented on the backpack of Ivarson et al. This modified Ivarson et al. backpack has been shown to include all the claimed features. Examiner maintains the position that there is no inventive step in taking a feature of one shoulder strap system and implementing it on another shoulder strap system, or to entirely replace one shoulder strap system with another shoulder strap system, absent a showing of unexpected results. One of ordinary skill in the art would find it obvious to replace the shoulder strap system of Ivarson et al. with another known shoulder strap system in an attempt to better or differently support the backpack of Ivarson et al. The expected result would be a backpack that was supported in a manner different than that provided by the original Ivarson et al. strap system.

Applicant has asserted that one of ordinary skill in the art would not make the upper shoulder strap cinch straps of Gausling et al. adjustable, even when implementing buckles like those taught by Godshaw in the manner set forth in paragraph 5 above. Examiner notes that the claims set forth no structure which allows for the claimed adjustability. Even if the straps were not provided with buckles that permitted the straps to slide through the buckle in a length-adjusting manner, a user could fold a section of that strap between their fingers, effectively decreasing the length of the strap by the length of the material that was folded, and the strap's length is adjusted. To say that a strap is "length adjustable" does not define over any ordinary strap which is capable of being twisted, folded, pinned, etc. such that it's length is changed, even if there is no "adjusting" buckle or other feature on that strap.

### ***Conclusion***

11. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER